



NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

Eric Jeffrey
Counsel
ejeffrey@nixonpeabody.com

Nixon Peabody LLP
799 9th Street NW
Suite 500
Washington, DC 20001-4501
202-585-8000

September 7, 2016

VIA EMAIL AND FIRST CLASS MAIL

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Motion of Respondents' Counsel for an Order to Show Cause Why the Commission Should Not Revoke Complainants' Counsel's Privilege of Practicing Before the Commission

If you have any questions, please do not hesitate to contact me.

Best regards,

Eric Jeffrey

Enclosures

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV ET AL

Consolidated With
DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV ET AL

**MOTION OF RESPONDENTS' COUNSEL FOR AN ORDER TO SHOW CAUSE
WHY THE COMMISSION SHOULD NOT REVOKE COMPLAINANTS'
COUNSEL'S PRIVILEGE OF PRACTICING BEFORE THE COMMISSION**

The opportunity to practice law before the Federal Maritime Commission is a privilege, not a right. FMC Rule 26 states that “[a]n attorney practicing before the Commission is expected to conform to the standards of conduct set forth in the American Bar Associations Model Rules of Professional Conduct as well as the specific requirements of this Chapter.” 46 C.F.R. 502.26. As detailed below, Complainants’ Counsel – Mr. Nussbaum and Mr. Katz – have failed repeatedly to conform to both the requirements of the Model Rules and the requirements of the FMC Rules. Accordingly, as advised by the Office of Secretary, Respondents’ Counsel begin the process of addressing with the Commission the misconduct of Complainants’ Counsel by

filing the instant motion with the Presiding Officer seeking an order requiring Mr. Nussbaum and Mr. Katz to show cause as to why their privilege of practicing before the FMC should not be revoked or otherwise terminated.¹

I am extremely unhappy to bring what I believe to be the first motion of this nature at the FMC. After much debate, however, I have concluded that I am required to do so by my own ethical obligation under the Commission's Rules, which require attorneys practicing before the FMC to report certain types of transgressions to the Commission, in order to protect the public. Model Rule 8.3(a) & Comment 1 thereto ("Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct").²

In light of the 10-page page limit applicable to this motion, we do not address every jot and tittle of Complainants' misconduct, only the lowlights.³

I. COMPLAINANTS' COUNSEL HAVE VIOLATED THE MODEL RULES

We demonstrate below that Counsel for Complainants have engaged in multiple and continuing violations of the ABA's Model Rules of Professional Conduct. For the convenience of the Presiding Officer, and of the Commission should it become necessary, we attach hereto some documents that were previously provided to the Presiding Officer in connection with other pleadings.

¹ It is my belief that because this motion is ancillary to the merits, any ruling by the Presiding Officer would be final for purposes of filing exceptions with the Commission.

² I anticipate that Counsel for Complainants will respond by repeating prior falsehoods and perhaps making their own cross-motion based on those falsehoods. My ethical obligation, however, is clear and cannot be ignored for personal benefit. In any event, I am prepared to defend against any of Counsel's easily disprovable claims.

³ Nor do we address the extreme incivility of Complainants' Counsel, as this does not violate a Model Rule, but only the guidelines of the ABA regarding duties to other counsel. See http://www.americanbar.org/groups/litigation/policy/conduct_guidelines/lawyers_duties.html.

A. Violations of Model Rules 3.3(a)(3) & 3.4(a)

Model Rule 3.3(a)(3) provides that:

“a lawyer shall not knowingly: . . . offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”

Model Rule 3.4(a) likewise states that “[a] lawyer shall not . . . unlawfully alter, destroy or conceal a document or other material having potential evidentiary value.”

Messrs. Nussbaum and Katz have repeatedly violated both these Rules by submitting and relying upon invoices they know to be falsified, and by failing to remedy the falsity. Attached hereto as **Appendix A** are sets of the four Empire invoices to Global for the vehicles at issue in this proceeding. In each case, the first document is the invoice Empire actually sent to Global, and the second is the very same invoice as produced and repeatedly referenced by Complainants’ Counsel.⁴ It does not take a forensics expert, but simply a pair of not-too-impaired eyes, to see that the documents produced by Complainants’ have been heavily doctored from the originals. *Res ipsa loquitur*.

Furthermore, Mr. Nussbaum was counsel to Global at the time these invoices were sent by Empire and received by Global. Moreover, as stated in the Affirmation of Jon Werner, attached as **Appendix B**, which was previously submitted in connection with Respondents’ August 16 Motion to Correct the Record, the template for this fraudulent activity was discovered in the EDNY litigation to be present on Global’s computer

⁴ Complainants’ Counsel cannot seek to shift the blame for this to their clients, as they have made a claim of attorney-client privilege for the native originals, which can only mean that the documents were sent *by Counsel to Complainants*, and not the other way around.

system. Mr. Kapustin has stated under oath that Mr. Nussbaum participated in – indeed masterminded – the creation of these fabrications. But even apart from what Mr. Kapustin said, as he is not an entirely reliable witness, it is clear that Mr. Nussbaum, and by extension Mr. Katz, were aware of the fabricated nature of these documents.

Even if credulity is stretched so far as to assume that Complainants’ Counsel did not know of the falsity when they submitted the fabricated invoices, they certainly knew better when they continued to rely upon the doctored documents after we demonstrated their falsity in our June 22, 2016 Motion to Strike Complainants’ “Shipping Documents.” Since that time, and most recently in their August 9 Reply on Supplementation of the Record, Messrs. Nussbaum and Katz have continued to cite these documents without any caveat regarding their falsity. In any event, once the falsity of the invoices was demonstrated, Complainants’ Counsel were required by the Rule to take remedial measures, but they have chosen not to comply with that ethical requirement.

B. Violations of Model Rule 3.3(a)(1)

Model Rule 3.3(a)(1) provides that:

“a lawyer shall not knowingly: . . . make a false statement of fact or the law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer”⁵

As explained in the Comments, this is intended to “avoid conduct that undermines the integrity of the adjudicative process” and a lawyer’s duty to represent the client “is qualified by the advocate’s duty of candor to the tribunal.” Comment 2.

⁵ Such action would also appear to violate Model Rules 4.1(a) (making a false statement of material fact), 8.4(c) (engaging in conduct involving dishonesty or misrepresentation), and 8.4(d) (engaging in conduct prejudicial to the administration of justice).

Mr. Nussbaum, has, as previously explained, knowingly misrepresented his whereabouts to the Presiding Officer and Respondents in order to gain an extension of 20 days to respond to Mr. Kapustin's Motion to Intervene. On July 18, after refusing to give Counsel for Respondents any reason why he was moving for an extension, Mr. Nussbaum stated in his motion only this:

"On the date the motion was filed, the undersigned was traveling overseas in order to attend to a family matter, with limited access to email. This fact has already been acknowledged by counsel for the Respondents, who on July 14, 2016 provided the Secretary and the Presiding Officer with a copy of the undersigned's 'Out of Office Auto-reply', which explained that the undersigned's law office '...will be closed from July 13, 2016 through August 11, 2016....'"⁶

On July 21, after Respondents filed a response questioning why Complainants needed so long if Counsel was, as appeared, no longer overseas, Mr. Nussbaum asserted for the first time that he was in Israel on a family matter. Respondents thereupon consented to, and the Presiding Officer granted, the requested extension.

As it turns out, and Mr. Nussbaum does not deny, he was in fact back in the United States and practicing law no later than July 28, and most likely by July 26. On July 28, Mr. Nussbaum physically attended a deposition in another proceeding that took place in Brooklyn, New York. See **Appendix C**, hereto, two emails from opposing counsel in that matter stating: (1) that Mr. Nussbaum attended the deposition in Brooklyn, and (2) that the deposition date was agreed to by Mr. Nussbaum in mid-June eliminating any possible excuse that he made an unexpected return to deal with this matter.

Indeed, it appears quite probable that Mr. Nussbaum was back home by July 26, 2016. That is what his out-of-office auto-reply said before he apparently changed it to August 11. See **Appendix D**, in which opposing counsel in another separate proceeding reported:

⁶ As discussed below, even this auto-response was a lie.

[B]elow you will see the “auto reply” response I received from Nussbaum after I emailed him on July 12th. It says his office would reopen on July 25th. That’s a big difference – returning on July 25th versus returning on August 12th. Is it possible that this guy sets up different auto responses depending upon who emails him? Is that even possible?⁷

This mirrors my own experience, As previously reported, I received in a short period three auto-replies stating Complainants’ Counsel would return on July 25, then August 11, then no auto-reply at all.⁸

What is especially troubling about this misrepresentation is how unnecessary it was. Had Mr. Nussbaum displayed candor to the undersigned and to the Presiding Officer – saying perhaps that he was traveling part of the time and would be pressed by other matters upon his return – the undersigned would have consented as a matter of course and courtesy between counsel, and we expect the Presiding Officer would have granted the extension based on the truth as readily as upon a falsehood.

C. Violations of Model Rule 1.9(c)

Model Rule 1.9(c) states in pertinent part that “[a] lawyer who has formerly represented a client in a matter . . . shall not thereafter . . . reveal information relating to the representation except as these Rules would permit or require with respect to a [current] client.” As previously documented, Mr. Nussbaum has flagrantly violated that Rule by knowingly submitting documents belonging to Global that are subject to a Protective Order issued by Judge Reyes while Mr. Nussbaum was representing Global and Mr. Kapustin. Furthermore, according to Mr.

⁷ On July 26 Complainants also submitted their response to the Presiding Officer’s Order to Supplement the Record, signed by Mr. Nussbaum in New Jersey.

⁸ So far as we are aware, this odd practice of changing one’s auto-response is not in-and-of-itself unethical, but it certainly appears to be so when used in support of a lie or misleading statement to the tribunal.

Kapustin, Mr. Nussbaum has been using in this matter non-public documents that he purloined from Global.⁹

D. Violations Of Model Rule 1.8(b)

Model Rule 1.8(b) mandates that “[a] lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.” Subject to the possibility of written, informed consent, Complainants’ Counsel would appear to have violated this Rule.

As previously explained, Mr. Nussbaum has coordinated with counsel for plaintiffs in the DNJ proceeding – Ms. Tempkin. This is not only stated on the face of the recent DNJ filing by Ms. Tempkin that Complainants seek to have entered in this proceeding, but also expressly admitted by Complainants’ Counsel. This assistance included Mr. Nussbaum providing Ms. Tempkin with mail sent to Mr. Nussbaum, and also making available to her filings herein not posted on the FMC website.

There must of course be some allowance for a lawyer’s professional judgment as to what will best serve his or her clients. We thus do not challenge Mr. Nussbaum’s decision to give up a slam-dunk case against Mr. Kapustin – against whom judgment has already been entered – in favor of a dubious claim against an entity with which it Complainants had no relationship. Here, however, Mr. Nussbaum’s tactics seem plainly adverse to his clients’ interests – assuming as we do, that their interest is in receiving compensation for their asserted losses, rather than simply attacking Mr. Kapustin. As the Presiding Officer expressly recognized, any monetary award to plaintiffs regarding the four cars at issue here would reduce or eliminate any possible award to

⁹ As we explained very early on in the proceeding, Mr. Nussbaum’s representation of Complainants appears to raise a substantial issue under Rule Model 1.9(a). As that is more Mr. Kapustin’s issue than ours, however, we do not address it herein.

Complainants. By helping plaintiffs, Mr. Nussbaum is thus reducing the potential recovery for those he purports to represent. Complainants' tactic does not appear to afford them anything other than an opportunity for Mr. Nussbaum to pursue an apparent vendetta against Mr. Kapustin. Given the very limited relevance of Mr. Kapustin to this case – where the issues are whether Complainants can prove they were party to the transportation contract with Empire, whether Complainants paid Empire directly for the transportation, and whether Complainants' claim that Empire declined to release vehicles to them when such release was prohibited by the transportation contract can be squared with Commission precedent to the contrary – there seems no possible argument that this was a legitimate bargain designed to benefit Complainants.

E. Violations of Model Rule 3.4(c)

Model Rule 3.4(c) forbids a lawyer to “knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.” As demonstrated in Part II below, Complainants' Counsel have engaged in repeated knowing violations of multiple FMC Rules that also violate this Model Rule.

II. VIOLATIONS OF THE FMC RULES

The very first filing made by Complainants' Counsel after the Complaint itself was a letter motion rejected by the Presiding Officer as a violation of the Rules and Initial Order. They have been violating those Rules, with accelerating frequency, ever since.

We cannot here catalog all of the transgressions committed by Complainants' Counsel. Instead, we focus on a couple of Rules that they have violated with great frequency.¹⁰

¹⁰ Complainants' Counsel have also repeatedly violated Rule 6(a) by making assertions without any belief, much less a reasonable belief, that they are well grounded in fact, including, inter alia: (i) the entirely groundless assertion that the undersigned wrote or edited anything submitted herein by Mr. Kapustin, (ii) the obviously specious claim that the undersigned requires a

A. Violations of Rule 71(c)

Rule 71(c), applicable to non-dispositive motions, states that a party “may not” file a reply to a response unless either the Presiding Officer requests such reply or the party makes a showing of “extraordinary circumstances.” Complainants’ Counsel have been flouting that requirement with obvious disregard for the Rules. For example:

1. On August 24, 2016, Complainants’ Counsel filed a motion for leave to file a sur-reply regarding Respondents’ motion for judgment on the pleadings, as to which briefing had ended a month earlier. After Respondents submitted a response in accordance with the Rules, Complainants’ Counsel filed on August 31, 2016 an improper reply to that response. Nowhere in that response does it state that the pleading was requested by the Presiding Officer or justified by “extraordinary circumstances.” Indeed, the phrase “extraordinary circumstances” appears nowhere in the reply. Respondents, as appropriate, filed a conditional response to that reply, arguing that the Presiding Officer should ignore Complainants’ unauthorized filing (and the conditional response) or, in the alternative, consider Respondents’ response based on demonstrated “extraordinary circumstances.” On September 1, Complainants’ Counsel brazenly submitted yet a second unauthorized reply.

2. On August 30, 2016, Complainants’ Counsel filed a motion to supplement the record, to which Respondents responded. On September 1, 2016, Complainants’ again filed an unauthorized reply without any attempt to request leave to do so or to suggest any “extraordinary circumstances.”

competency evaluation, and (iii) the patently false assertion that the undersigned improperly used a visit to his father’s grave as a partial reason for an extension of time.

B. Violations of Rule 71(a)

Rule 71(a) provides that “before” filing a motion, the movant must (i) confer with opposing counsel to resolve or narrow the issues, and (ii) state within the body of the motion what attempt to confer was made. In all of the motions filed by Complainants’ Counsel to date, they have only *once* made even the smallest effort to confer. That was Complainants’ request for an extension wherein Mr. Nussbaum misrepresented his whereabouts. And even then, all Mr. Nussbaum did was send the undersigned a statement of his intent to make the motion in a few hours – not giving any reason for the lengthy delay and declining to do so when asked.

The two recent motions for leave to file a sur-reply and to supplement the record, discussed above, are just two of many instances where Complainants’ Counsel blatantly ignored this Rule – neither attempting to confer nor making any report in the body of the motion (or elsewhere).

CONCLUSION

For the foregoing reasons, Counsel for Respondents requests that the Presiding Officer issue an Order for Complainants’ Counsel to Show Cause Why the Commission Should Not Revoke Their Privilege of Practicing before the Commission.

Respectfully submitted,



Eric Jeffrey
Nixon Peabody LLP
799 9th Street, N.W., Suite 500
Washington, D.C. 20001
202-585-8000

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Motion of Respondents' Counsel for an Order to Show Cause Why the Commission Should Not Revoke Complainants' Counsel's Privilege of Practicing Before the Commission by email and first class mail to the following:

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.
P.O. Box 245599
Brooklyn, NY 11224

Dated at Washington, DC, this 7th day of September, 2016.


Eric Jeffrey
Counsel for Respondents

Appendix A

Invoices

EUL-Yuliya Mikhailkevich

From: EUL-Yuliya Mikhailkevich
Sent: Monday, November 12, 2012 10:30 AM
To: account@globalautousa.com
Subject: ST#439

ST#439								
103783	2009 VOLKSWAGEN TIGUAN	WVGBV75N29W525297	31-Aug	6-Nov	TGHU8737440	038EUL1039353	AMOUNT TO PAY	\$ 2,250.00
103783	2011 JEEP COMPASS	1J4NF5FB7BD282296	18-Oct	25-Oct	TGHU8737440	038EUL1039353	AMOUNT PAID	\$ -
103783	2009 MERCEDES- BENZ C300	WDDGF81X49R073295	25-Oct	6-Nov	TGHU8737440	038EUL1039353	AMOUNT DUE	\$ 2,250.00

Best regards,

Yuliya Mikhailkevich

Empire United Lines Co., Inc

2303 Coney Isl Ave
Brooklyn, NY 11223
Tel:(718) 998-6900
Fax:(718) 998-7014
e-mail: yuliya@eulines.com

From: Svetlana - Global Auto USA [<mailto:account@globalautousa.com>]
Sent: Sunday, November 11, 2012 5:39 PM
To: EUL-Yuliya Mikhailkevich
Subject: invoice needed

EMPIRE UNITED LINES

2303 Coney Island Avenue, Brooklyn, NY 11223
Tel: (718) 998-6900; Fax (718) 998-7014

Empire United Co., Inc.
Bank of America
1415 Ave Z.
Brooklyn, NY 11235

Account# 9380009007
International Routing code: 021000332
Domestic Routing code: 026009593
FT code for Bank of America BOFAUS3N



Statement # 439

ST#439						
103783	2009 VOLKSWAGEN TIGUAN	WVGBV75N29W525297	31-Aug	6-Nov	TGHU8737440	038EUL1039353
103783	2011 JEEP COMPASS	1J4NF5FB7BD282296	18-Oct	25-Oct	TGHU8737440	038EUL1039353
103783	2009 MERCEDES-BENZ C300	WDDGF81X49R073295	25-Oct	6-Nov	TGHU8737440	038EUL1039353

AMOUNT TO PAY	\$2,250.00
AMOUNT PAID	
AMOUNT DUE	\$2,250.00



PAID

EUL-Yuliya Mikhalkovich

From: EUL-Yuliya Mikhalkovich
Sent: Monday, January 07, 2013 3:21 PM
To: account@globalautousa.com
Subject: ST#449 - ST#450

ST#449								
104452	2009 TOYOTA PRIUS	JTDKB20U897858466	12-Oct	27-Dec	TCKU9873233	038EUL1045297	AMOUNT TO PAY	\$ 1,500.00
104452	2009 TOYOTA CAMRY	4T1BE46K19U306703	14-Nov	27-Dec	TCKU9873233	038EUL1045297	AMOUNT PAID	\$ -
							AMOUNT DUE	\$ 1,500.00

ST#450								
104450	2010 VOLKSWAGEN CC	WVWML7AN7AE525508	27-Nov	4-Jan	MSCU9152382	038EUL1045295	AMOUNT TO PAY	\$ 1,500.00
104450	2010 SUBARU LEGACY	4S3BMBB65A3210717	12-Oct	4-Jan	MSCU9152382	038EUL1045295	AMOUNT PAID	\$ -
							AMOUNT DUE	\$ 1,500.00

Best regards,

Yuliya Mikhalkovich

EMPIRE UNITED LINES

2303 Coney Island Avenue, Brooklyn, NY 11223
Tel: (718) 998-6900; Fax (718) 998-7014

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Brooklyn, NY 11235

Account# 9380009007
International Routing code: 021000332
Domestic Routing code: 026009593
FT code for Bank of America BOFAUS3N

Statement # 449



ST#449							
104452	2009 TOYOTA PRIUS	JTDKB20U897858466	12-Oct	27-Dec	TCKU9873233	038EUL1045297	
104452	2009 TOYOTA CAMRY	4T1BE46K19U306703	14-Nov	27-Dec	TCKU9873233	038EUL1045297	

AMOUNT TO PAY	\$1,500.00
AMOUNT PAID	
AMOUNT DUE	

PAID

EUL-Yuliya Mikhailkevich

From: EUL-Yuliya Mikhailkevich
Sent: Monday, November 12, 2012 10:30 AM
To: account@globalautousa.com
Subject: ST#439

ST#439								
103783	2009 VOLKSWAGEN TIGUAN	WVGBV75N29W525297	31-Aug	6-Nov	TGHU8737440	038EUL1039353	AMOUNT TO PAY	\$ 2,250.00
103783	2011 JEEP COMPASS	1J4NF5FB7BD282296	18-Oct	25-Oct	TGHU8737440	038EUL1039353	AMOUNT PAID	\$ -
103783	2009 MERCEDES- BENZ C300	WDDGF81X49R073295	25-Oct	6-Nov	TGHU8737440	038EUL1039353	AMOUNT DUE	\$ 2,250.00

Best regards,

Yuliya Mikhailkevich

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2303 Coney Isl Ave
Brooklyn, NY 11223
Tel:(718) 998-6900
Fax:(718) 998-7014
e-mail: yuliya@eulines.com

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Sent: Sunday, November 11, 2012 5:39 PM
To: EUL-Yuliya Mikhailkevich
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1415 Ave Z.

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Account# 9380009007

International Routing code: 021000332

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Statement # 439

ST#439						
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103783	2011 JEEP COMPASS	1J4NF5FB7BD282296	18-Oct	25-Oct	TGHU8737440	038EUL1039353
103783	2009 MERCEDES-BENZ C300	WDDGF81X49R073295	25-Oct	6-Nov	TGHU8737440	038EUL1039353

AMOUNT TO PAY	\$2,250.00
AMOUNT PAID	
AMOUNT DUE	\$2,250.00



PAID

EUL-Yuliya Mikhailkevich

From: EUL-Yuliya Mikhailkevich
Sent: Monday, December 17, 2012 1:39 PM
To: account@globalautousa.com
Subject: ST#449

ST#449									
104211	2010 GMC ACADIA SLT-2	1GKLVNED6AJ138200	19-Oct	27-Nov	TCNU8761450	038EUL1046438	AMOUNT TO PAY	\$	1,500.00
104211	2010 ACURA RDX	5J8TB2H29AA000682	13-Dec	13-Dec	TCNU8761450	038EUL1046438	AMOUNT PAID	\$	-
							AMOUNT DUE	\$	1,500.00

Best regards,

Yuliya Mikhailkevich

Empire United Lines Co., Inc

2303 Coney Isl Ave
Brooklyn, NY 11223
Tel:(718) 998-6900
Fax:(718) 998-7014
e-mail: yuliya@eulines.com

From: Svetlana - Global Auto USA [<mailto:account@globalautousa.com>]
Sent: Monday, December 17, 2012 12:44 PM
To: EUL-Yuliya Mikhailkevich
Subject: invoice needed

EMPIRE UNITED LINES

2303 Coney Island Avenue, Brooklyn, NY 11223
Tel: (718) 998-6900; Fax (718) 998-7014

Empire United Co., Inc.
Bank of America
1415 Ave Z.
Brooklyn, NY 11235

Account# 9380009007
International Routing code: 021000332
Domestic Routing code: 026009593
FT code for Bank of America BOFAUS3N



Statement # 448

ST#448						
104211	2010 GMC ACADIA SLT-2	1GKLVNED6AJ138200	19-Oct	27-Nov	TCNU8761450	038EUL1046438
104211	2010 ACURA RDX	5J8TB2H29AA000682	13-Dec	13-Dec	TCNU8761450	038EUL1046438

AMOUNT TO PAY	\$1,500.00
AMOUNT PAID	
AMOUNT DUE	\$1,500.00



PAID

Appendix B

Affirmation of Jon Werner

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 15-11

IGOR OVCHINNIKOV, ET AL

v.

MICHAEL HITRINOV ET AL

Consolidated With

DOCKET NO. 1953(I)

KAIRAT NURGAZINOV, ET AL

v.

MICHAEL HITRINOV ET AL

AFFIRMATION OF JON WERNER

Jon Werner, affirms the following to be true under penalties of perjury under 28 U.S.C. § 1746, and says:

1. I am a member of the law firm of Lyons & Flood, LLP which represents Respondents Michael Hitrinov and Empire United Lines Co., Inc. in a matter captioned as *Global Auto, Inc., G Auto Sales, Inc., and Effect Auto Sales, Inc. v. Michael Hitrinov et al.*, 13 Civ. 2479 (SLT) (RER), and a matter captioned as *Empire United Lines Co., Inc. and Michael Hitrinov v. SK Imports, Inc. d/b/a Global Cars, Sergey Kapustin, Irina Kapustina, and Michael Goloverya*, 14 Civ. 2566 (SLT) (RER), both of which are pending in the United States District Court for the Eastern District of New York. I have personal knowledge concerning the matters

which I state in this affirmation.

2. The plaintiffs' claims in the 13 Civ. 2479 matter have been dismissed and the plaintiffs have been found in default with respect to the counterclaims asserted by Empire United Lines Co., Inc. and Michael Hitrinov in that matter.

3. The plaintiffs in the 13 Civ. 2479 matter were represented by counsel for the Complainants, Marcus A. Nussbaum, Esq. from at least April 24, 2013 through March 5, 2015. Mr. Nussbaum's co-counsel on behalf of the plaintiffs from August 8, 2013 through February 13, 2015 was Boris Parker, Esq. of Parker & Wenner, P.A.

4. On April 9, 2014, a Protective Order was issued by the Honorable Ramon E. Reyes in the 13 Civ. 2479 matter in order to preserve the confidentiality of certain documents produced by the parties that were designated to be confidential. A true and accurate copy of the April 9, 2014 Protective Order is annexed hereto as Exhibit 1.

5. On June 18, 2014, co-counsel for the plaintiffs in the 13 Civ. 2479 matter, Mr. Parker, served the undersigned with a document production consisting of pages Bates stamped PLS00001 through PLS10151. This production included internal documents of Global Auto, Inc., G Auto Sales, Inc., and Effect Auto Sales, Inc. which were never previously provided to Empire United Lines Co., Inc. and/or Michael Hitrinov. Annexed hereto as Exhibit 2 are emails between the undersigned and Mr. Parker regarding this production and scans of the DVD on which the production was provided to the undersigned.

6. I understand from counsel for the Respondents in this case that Appendix 3 to Complainants' Reply to Respondents' Response to Order for Parties to Supplement the Record consisted of two pages bearing Bates stamps PLS10024 and PLS10025 and the legend "CONFIDENTIAL."

7. I have reviewed Appendix 3 and can confirm that they are the very same documents which were produced by the plaintiffs in the 13 Civ. 2479 matter (which does not appear to have been part of any communications between Empire United Lines Co., Inc. and the plaintiffs), and which were marked as confidential pursuant to the terms of the April 9, 2014 Protective Order issued by Magistrate Judge Reyes.

8. I have also reviewed Appendix 2 to Complainants' Reply to Respondents' Response to Order for Parties to Supplement the Record, which consists of pages Bates stamped EUL_004290 through EUL_004329, and can confirm that these documents were produced by defendants in the 13 Civ. 2479 matter, but that Mr. Nussbaum has failed to include the entirety of the email exchange attached to the May 13, 2013 email that begins at the page Bates stamped EUL_004327. The full email exchange runs from EUL_004327 through EUL_004335 and a complete copy of that exchange is annexed hereto as Exhibit 3.

The foregoing is true and correct to the best of my knowledge under penalties of perjury under 28 U.S.C. § 1746.

Signed on August 15, 2016



Jon Werner

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GLOBAL AUTO, INC., G AUTO SALES,
INC., and EFFECT AUTO SALES, INC.,

Plaintiffs,

CIVIL ACTION NO.:
13-CV-2479 (SLT) (RER)

-vs.-

MICHAEL HITRINOV, a/k/a MICHAEL
KHITRINOV, EMPIRE UNITED LINES, CO.
INC., CARCONT OY, LTD, and JOHN DOES
1 THROUGH 5,

Defendants.

PROTECTIVE ORDER

Plaintiffs above named and Defendants Michael Hitrinov, and Empire United Lines, consider certain information to be confidential and proprietary in the sense of Rule 26 of the Federal Rules of Civil Procedure and, therefore, mutually desire that a protective order limiting use, access to, and disclosure of such information be entered in this case. Plaintiff and Defendant have entered into a stipulation and have jointly requested that this Court enter this Stipulated Protective Order ("Stipulated Order"). In furtherance of the parties' stipulation, and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, it is hereby ORDERED that:

This Stipulated Order governs the handling of any information produced or disclosed by any party or non-party ("the Producing Party") to the receiving party in the above captioned civil action (hereinafter "Action") including documents, depositions, deposition exhibits, interrogatory responses, responses to requests for admission, and pretrial and trial testimony, and

all copies, extracts, summaries, compilations, designations and portions of any of the foregoing (such information shall hereinafter be referred to as "Discovery Material").

1. Confidential Information. Any Producing Party may designate any Discovery Material as "Confidential" under the terms of this Stipulated Order if such party in good faith believes that such Discovery Material contains "Confidential Information." The term "Confidential Information" shall be interpreted to mean: information that constitutes confidential information and that is used in, or pertains to, the disclosing party's business that is not generally known, and that the disclosing party would not normally reveal to third parties or, if disclosed, would require such third parties to maintain in confidence.

2. Attorney's Eyes Only Information. Any Producing Party may designate any Discovery Material as "Attorney's Eyes Only" under the terms of this Stipulated Order if such party in good faith believes that such Discovery Material contains "Attorney's Eyes Only Information." The term "Attorney's Eyes Only Information" shall be interpreted to mean: information of a sensitive nature that if disclosed to persons of expertise in the area would provide significant technical or business advantages to the receiving party and that includes as a major portion subject matter that is believed to be unknown to the opposing party or parties, or any of the employees of the corporate parties. "Attorney's Eyes Only" information includes but is not limited to certain highly sensitive technical information, past and current product development, marketing plans and forecasts, customer lists, and highly sensitive financial information such as pricing plans.

3. Use of Confidential and Attorney's Eyes Only Discovery Material. Confidential and Attorney's Eyes Only Discovery Material, and any information derived therefrom, shall be

used solely for purposes of this Action and shall not be used for any other action or purpose, including, without limitation, any business, proprietary, commercial, or governmental purpose.

4. Manner of Designating Materials. The designation of Discovery Material as "Confidential" or "Attorney's Eyes Only" for purposes of this Stipulated Order shall be made in the following manner by the Producing Party.

(a) In the case of documents, including any and all exhibits, briefs, memoranda, interrogatory responses, responses to requests for admission, or other materials (apart from transcripts or recordings of oral testimony from any deposition, pretrial or trial proceedings, which are subject to paragraph 4(b) below), by affixing the legend "Confidential" to those pages of such documents as contain Confidential Discovery Material and affixing the legend "Attorney's Eyes Only" to those pages of such documents as contain Attorney's Eyes Only Discovery Material. In the case of pleadings, such as interrogatory answers, responses to requests for admission, briefs, declarations, or affidavits, the front page of any such document shall also indicate clearly that portions of the document are designated Confidential or Attorney's Eyes Only.

(b) In the case of video tapes, audio tapes, and electronic media such as computer disks or compact disks (CD), which contain or include Confidential or Attorney's Eyes Only Discovery Material, by affixing the required legend on the package thereof. This provision does not apply to electronic media containing images of documents, where such documents are capable of being individually labeled.

(c) For deposition, pretrial or trial testimony, in one of the following manners:

(i) At any deposition or pretrial or trial proceeding, upon any inquiry with regard to the content of a document marked "Confidential" or "Attorney's Eyes Only," or

when counsel for a person (party or nonparty) deems that the answer to a question may result in the disclosure of Confidential or Attorney's Eyes Only of his or her client within the meaning of this Stipulated Order, counsel for the person whose information is involved, at his or her option, may state on the record before or during the deposition or proceeding that such testimony shall be treated as "Confidential" or "Attorney's Eyes Only" Discovery Material, and, in lieu of taking other steps available in such situation, may direct that the question and answer be transcribed separately from the remainder of the deposition or proceeding and be filed in a sealed envelope marked in the manner set forth in ¶ 10 hereof. When such a direction has been given, the disclosure of the testimony shall be limited in the manner specified in ¶¶ 5-7 hereof, and the information contained therein shall not be used for any purpose other than for purposes of this suit. Counsel for the person whose information is involved may also request that all persons other than the reporter, court personnel, counsel and authorized individuals leave the deposition or proceeding room during the confidential portion of the deposition or proceeding. The failure of such other persons to comply with a request to leave the deposition or proceeding, unless the Court orders the testimony to go forward, shall constitute substantial justification for counsel to advise the witness that he or she need not answer the question.

(ii) Within 10 business days from the receipt of the transcript or recording of the deposition or proceeding, counsel of record may designate the testimony or portions thereof as Confidential or Attorney's Eyes Only Discovery Material and give written notice to opposing counsel.

The parties shall treat all depositions and other pretrial and trial testimony as Attorney's Eyes Only Discovery Material until 10 business days after receiving a copy of the transcript thereof. After 10 business days, only those portions of any transcript designated in

writing (or on the record at the deposition or proceeding) as "Confidential" shall be deemed Confidential Discovery Material, and only those portions of any transcript designated in writing (or on the record at the deposition or proceeding) as "Attorney's Eyes Only" shall be deemed Attorney's Eyes Only Discovery Material. Counsel for the party designating a transcript, recording or portions thereof "Confidential" or "Attorney's Eyes Only" shall be responsible for arranging to have appropriate confidentiality legends affixed to at least the first page of the original transcript, or affixed as appropriate to any other form of recording, and copies of the transcript or recording containing Confidential or Attorney's Eyes Only Information. Any receiving party is, however, upon receipt of the notice discussed herein, responsible for appropriately marking those copies of the transcript or recording containing Confidential or Attorney's Eyes Only Information that are in the possession of the receiving party. The parties may modify this procedure for any particular deposition or proceeding, through agreement on the record at such deposition or proceeding or otherwise by written stipulation, without further order of the Court.

(d) In the case of documents being made available for inspection, at the request of counsel for the Producing Party, all documents and things produced for inspection during discovery shall initially be considered to contain wholly Attorney's Eyes Only Information, and shall be produced for inspection only to persons representing the Receiving Party who fall within the category described in sub-paragraphs 5(a) and (b) of this Stipulated Order. All such documents and things initially shall be fully subject to the limitations on disclosure and use of Attorney's Eyes Only Information provided in this Stipulated Order. At the initial (or any subsequent) inspection of the original documents and things, if requested, the Receiving Party shall not make copies of the documents produced, and if notes are made

therefrom other than a list identifying documents or things to be copied or otherwise furnished, such notes shall be treated as Attorney's Eyes Only Information. Copies of documents and things requested by the Receiving Party shall be made, Bates-numbered and delivered to the Receiving Party; such process shall be performed as promptly as reasonably practicable and shall not await the production or inspection of other documents or things. After the Receiving Party has designated documents or things for copying, and before copies are transmitted to the Receiving Party, counsel for the Producing Party shall designate and mark the documents and things, as appropriate, as "Confidential" and as "Attorney's Eyes Only," in accordance with paragraph 4(a) of this Order. Except as provided below in this paragraph, documents and things not so designated shall be considered thereafter outside the provisions of this Stipulated Order. Failure to so designate and mark as provided above in this paragraph shall not preclude the Producing Party from thereafter in good faith making such a designation and requesting the Receiving Party to so mark and treat such documents and things so designated. After such designations, such documents and things shall be fully subject to this Stipulated Order. The Receiving Party, however, shall incur no liability for disclosures made prior to notice of such designations.

(e) A party may be considered to be a "Producing Party" of Discovery Material produced by non-parties pursuant to Federal Rule of Civil Procedure 45, including but not limited to deposition testimony and documents, where the party would otherwise be entitled and have standing to object to the production of said Discovery Materials under Rule 45. Any party making a designation of Discovery Materials under this subparagraph must give written notice to all other parties citing this subparagraph and specifically identifying the materials so designated.

5. Who May Access "Confidential" Information. Discovery Material designated "Confidential" may be disclosed, summarized, described, or otherwise communicated or made available in whole or in part only to the following:

(a) Outside counsel of record in this case, together with secretaries, paralegals, document clerks and other support staff reporting directly to them and who are necessary to assist counsel with the preparation or trial of this action;

(b) Each party's respective in-house legal staff, as well as their legal assistants, paralegals, or other support personnel actively involved in supporting this litigation. Each party hereto represents that such persons have been (or will be prior to receiving Confidential Information) informed of the terms of this Stipulated Order;

(c) For each party: Officers, directors, staff personnel, and employees of the parties as necessary to aid trial counsel in the preparation of claims and defenses in this lawsuit. Each party hereto represents that such persons have been (or will be prior to receiving Confidential Information) informed of the terms of this Stipulated Order;

(d) For each party, consultants or experts specifically retained for this Action, together with their assistants, subject to and conditioned upon compliance with paragraphs 6 and 8 of this Stipulated Order;

(e) The Court, its clerks and Court personnel, and those court reporters, videographers, and necessary support personnel of such court reporters retained in connection with depositions, hearing, or trial testimony given or taken by any party in this Action, to the extent necessary to transcribe the testimony and identify exhibits marked in the course of the testimony subject to paragraph 10 of this Stipulated Order;

(f) Commercial copy services, translators, data entry and computer support organizations, and such persons who assist in preparing demonstrative trial exhibits, hired by and assisting outside counsel for a party, provided such commercial organizations are made aware of and agree to abide by the provisions of this Stipulated Order;

(g) Members of a jury empanelled in this action; and

(h) Such other persons as hereafter may be designated by written agreement in this action or by order of the Court.

6. Experts and Consultants. Each independent expert and consultant referred to in 5(d) hereof to whom Confidential or Attorney's Eyes Only Discovery Material is to be given, shown, disclosed, made available or communicated in any way, shall first execute an undertaking agreeing to be bound by the terms of this Stipulated Order, a copy of which shall be maintained by the expert or consultant and the Party that retained said expert or consultant.

7. Who May Access "Attorney's Eyes Only" Information. Discovery Material designated "Attorney's Eyes Only" may be disclosed, summarized, described, or otherwise communicated or made available in whole or in part only to persons identified in sub-paragraphs 5(a)-(b) and 5(d)-(h). The Receiving Party will not disclose Attorney's Eyes Only Discovery Material to any other individual unless written authorization for further disclosure is given by the Producing Party or further ordered by the Court.

8. Execution of Undertaking. Each person who, under sub-paragraph 5(d), receives, gains access to, or otherwise learns of any "Confidential" or "Attorney's Eyes Only" Information, not previously known to that person, shall sign the Undertaking attached as Exhibit A hereto, confirming the Recipient's understanding and agreement to abide by the terms of this Stipulated Order. Counsel for the Receiving Party shall retain the original of the Undertaking.

9. Witness Access to Confidential Information. Any person may be interviewed, subpoenaed or examined as a witness at a hearing, trial or a deposition concerning any "Confidential" or "Attorney's Eyes Only" Information which that person had lawfully received or had personal access to prior to and apart from this lawsuit, including information of a Producing Party that appears on its face or from other documents or testimony to have been received previously by that person or communicated to that person. During the deposition of a non-party witness, the witness may be shown "Confidential" or "Attorney's Eyes Only" Discovery Material only subject to and conditioned upon compliance with the requirements of this Stipulated Order.

10. Filing Under Seal. All documents of any nature, including briefs, which have been designated as "Confidential" or "Attorney's Eyes Only" or which contain "Confidential" or "Attorney's Eyes Only" Information, which are filed with the Court shall be filed under seal in sealed envelopes marked with the title of the Action, the title of the paper, and a statement substantially in the following form:

CONFIDENTIAL - FILED UNDER SEAL

FILED PURSUANT TO A PROTECTIVE ORDER DATED GOVERNING
CONFIDENTIALITY OF DOCUMENTS AND INFORMATION OBTAINED
DURING THE COURSE OF THIS LITIGATION.

11. No Admission or Prejudice. Entering into, agreeing to and/or producing or receiving "Confidential" or "Attorney's Eyes Only" Information or otherwise acting in accordance with the terms of this Stipulated Order, or failing to object thereto, shall not:

(a) operate as an admission by any party that any particular information comprises or reflects trade secrets, proprietary or commercially sensitive information or any other type of confidential information;

(b) operate as an admission by any party that the restrictions and procedures set forth herein constitute adequate protection for any particular information deemed by any party to be "Confidential" or "Attorney's Eyes Only" Information;

(c) prejudice or waive in any way the rights of the parties to object to the production of documents they consider not subject to discovery for any reason;

(d) prejudice or waive in any way the rights of any party to object to the authenticity or admissibility into evidence of any document, testimony or other evidence subject to this Stipulated Order;

(e) prejudice or waive in any way the rights of a party to seek determination by the Court whether any Discovery Material should or should not be subject to the terms of this Stipulated Order;

(f) prejudice or waive in any way the rights of a party to petition the Court for a further protective order relating to any purportedly confidential information;

(g) prejudice or waive in any way any claim or defense in this Action; or

(h) prevent the parties to this Stipulated Order from agreeing in writing or on the record during a deposition or hearing in this Action to alter or waive the provisions or protections provided for herein with respect to any particular Discovery Material.

12. Materials that are "Exempt." This Stipulated Order has no effect upon, and shall not apply to, a Producing Party's use or disclosure of its own "Confidential" or "Attorney's Eyes Only" Information for any purpose. Nothing contained herein shall impose any restrictions on the use or disclosure by a Receiving Party of documents, materials or information designated as "Confidential" or "Attorney's Eyes Only" obtained lawfully by such party independently of any proceeding in this Action, or which:

(a) was already known to such Receiving Party by lawful means prior to acquisition from, or disclosure by, another party in this Action;

(b) is or becomes publicly known through no fault or act of the Receiving Party; or

(c) is rightfully obtained by the Receiving Party from a third party which has authority to provide such "Confidential" or "Attorney's Eyes Only" Information and without restriction as to disclosure.

13. Treatment of "Exempt" Materials. Notwithstanding the provisions of paragraph 12, where the Receiving Party in good faith believes one or more of the exceptions set forth in paragraph 12 is applicable, Receiving Party shall challenge said designation in accordance with paragraph 18 and shall treat the disputed Discovery Material "Confidential" or "Attorney's Eyes Only" as designated by the Producing Party until the challenge is resolved.

14. Joinder of Parties. In the event additional parties join or are joined in this Action, they shall not have access to "Confidential" or "Attorney's Eyes Only" information until the newly-joined party or its counsel has executed and, at the request of any party, filed with the Court its agreement to be fully bound by this Stipulated Order or an alternative protective order which is satisfactory to all parties and the Court.

15. Governance of Proceeding; Modification. The provisions of this Stipulated Order shall govern discovery and all pretrial, trial, post-trial and appellate proceedings in this Action. Each of the parties hereto is entitled to seek modification of this Stipulated Order by application to the Court on notice to the other parties hereto for good cause.

16. Termination. The provisions of this Stipulated Order shall, absent written permission of the Producing Party or further order of the Court, continue to be binding

throughout and after the conclusion of this Action, including, without limitation, any appeals therefrom. Within 60 days after receiving notice of the entry of an order, judgment or decree finally disposing of this Action, including any appeals therefrom, all persons having received "Confidential" or "Attorney's Eyes Only" Information shall, at the option of the Receiving Party, destroy or return to counsel for the Producing Party such information and all copies thereof (including summaries and excerpts). Counsel shall make reasonable efforts to ensure that any Consultants it has retained abide by this provision. Counsel for the Receiving Party shall provide a certification in writing to counsel for the Producing Party that all "Confidential" or "Attorney's Eyes Only" Information in its possession has been destroyed or returned pursuant to this paragraph. Outside counsel of record for the Receiving Party shall be entitled to retain court papers, deposition and trial transcripts and exhibits, and attorney work product (including court papers, transcripts, and attorney work product that contains Confidential and/or Attorney's Eyes Only Discovery Material), provided that such counsel, and employees of such counsel, shall not disclose any such Discovery Material contained in such court papers, transcripts, or attorney work product to any person or entity except pursuant to a written agreement with the Producing Party. All material returned to the parties or their counsel by the Court likewise shall be disposed of in accordance with this paragraph.

17. Survival and Amendments. The Court retains jurisdiction to make such amendments, modifications, and additions to this Stipulated Order as it may from time to time deem appropriate. Any party may make a request to the Court for any reasonable amendment to this Stipulated Order to facilitate the efficient and appropriate handling of Confidential Information. The Court retains jurisdiction subsequent to settlement or entry of judgment to enforce the terms of this Stipulated Order.

18. Disputing a Designation. If the Receiving Party disagrees with a "Confidential" and/or "Attorney's Eyes Only" designation, it may notify the Producing Party in writing of such disagreement, and both parties will thereupon confer in good faith as to the proper status of such. If the parties are unable to reach agreement, the Receiving Party may apply to the Court for a ruling concerning the status of such information and, while such application and ruling are pending, the Receiving Party shall treat such information as required under this Stipulated Order. No party shall be obligated to challenge the propriety of a designation, and a failure to do so during or after this Action shall not preclude a subsequent attack on the propriety of such designation. The provisions of this Stipulated Order are not intended to shift the burden of establishing confidentiality.

19. Subpoena or Legal Process. If any Receiving Party is (a) subpoenaed in another action, or (b) served with a demand in another action to which it is a party, or (c) served with any legal process by one not a party to this Action, seeking Discovery Material which was produced or designated as "Confidential" or "Attorney's Eyes Only" by someone other than the Receiving Party, the Receiving Party, upon determining that such Discovery Materials are called for, shall give actual written notice, at the earliest practicable time, by hand or facsimile transmission, of such subpoena, demand or legal process, to those who produced or designated the material "Confidential" or "Attorney's Eyes Only" and shall object to its production to the extent permitted by law. Should the person seeking access to the "Confidential" or "Attorney's Eyes Only" information take action against the Receiving Party or anyone else covered by this Stipulated Order to enforce such a subpoena, demand or other legal process, the Receiving Party shall respond by setting forth the existence of this Stipulated Order and shall cooperate with the Producing Party so that the Producing Party can appear and object to production. Nothing herein

shall be construed as requiring the Receiving Party or anyone else covered by this Stipulated Order to challenge or appeal any order issued under the circumstances of this paragraph requiring production of Confidential or Attorney's Eyes Only Discovery Material covered by this Stipulated Order, or to subject itself to any penalties for noncompliance with any legal process or order, or to seek any relief from this Court.

20. Disclosure to Government Agency. In the event that any Receiving Party is required to (or shall, pursuant to a statute or regulation) disclose Discovery Material which was produced or designated by another disclosing party as "Confidential" or "Attorney's Eyes Only" to a United States government agency, the Receiving Party shall (a) request from the government agency the highest form of confidentiality treatment for the information allowed by the agency's rules and regulations, and (b) prior to the submission of the information to the agency, shall provide to the disclosing party copies of the Discovery Material or the written matter containing the information, or, if the information is not in written form, a detailed summary of the substance of the information.

21. Rendering Legal Advice. Nothing herein shall bar or otherwise restrict an attorney who is a qualified recipient of "Confidential" or "Attorney's Eyes Only" Information under the terms of sub-paragraphs 5(a) or (b) and paragraph 7 of this Stipulated Order from rendering advice to his or her client with respect to this action and, in the course thereof, from generally relying upon his or her examination of such Discovery Material. In rendering such advice or in otherwise communicating with the client, the attorney shall not disclose the specific content of any such Discovery Material of another person or party, whether specifically, generally, inferentially, in summary or otherwise, where such disclosure would not otherwise be permitted under the terms of this Stipulated Order.

22. Inadvertent Production. The inadvertent production of any privileged or otherwise protected or exempted information, as well as the inadvertent production of information without an appropriate designation of confidentiality, shall not be deemed a waiver or impairment of any claim of privilege or protection, including, but not limited to, the attorney-client privilege, the protection afforded to work-product materials, or the subject matter thereof or the confidential nature of any such information, as to the inadvertently produced document and as to any related material. The Producing Party must notify the Receiving Party promptly, in writing, upon discovery that a document has been inadvertently produced. Upon receiving written notice from the Producing Party that privileged or confidential information and/or work-product material has been inadvertently produced, all such information, and all copies thereof, shall be returned to the Producing Party within five (5) business days of receipt of such notice and the Receiving Party shall not use such information for any purpose until further Order of the Court. All copies of the documents in electronic format must also be returned, or destroyed. If Receiving Party contests the privilege, confidentiality or work-product designation by the Producing Party, the Receiving Party shall give the Producing Party written notice of the reason for said disagreement and shall be entitled to retain one copy of the disputed document for use in resolving the dispute. The Receiving Party shall, within fifteen (15) business days from the initial notice by the Producing Party, move the Court for an Order compelling the production of the material, but said motion shall not assert as a ground for entering such an Order the fact or circumstances of the inadvertent production. If no such motion is filed, upon expiration of the fifteen (15) day period then all copies of the disputed document shall be returned in accordance with this paragraph. Any analyses, memoranda or notes which were internally generated based upon such inadvertently-produced information shall immediately, after extracting such material

as is not related to the inadvertently produced information be placed in sealed envelopes, and shall be destroyed in the event that (a) the Receiving Party does not contest that the information is privileged, or (b) the Court rules that the information is privileged. Such analyses, memoranda or notes may only be removed from the sealed envelopes and returned to its intended purpose in the event that (a) the Producing Party agrees in writing that the information is not privileged, or (b) the Court rules that the information is not privileged.

23. Adequate Location of Materials. All materials containing Confidential or Attorney's Eyes Only Information shall be maintained at a location and under circumstances to ensure that access is limited to those persons entitled to have access under the Stipulated Order.

Stipulated by the parties:

DATE: April 7, 2014

PARKER & WENNER, PA

/s/ Boris Parker
Boris Parker #291316
boris@parkerwenner.co
100 South Fifth Street
2100 Fifth Street Towers
Minneapolis, MN 55402
(612) 355-2200

ATTORNEYS FOR PLAINTIFFS

Dated: April 7, 2014

BROWN GAVALAS & FROMM, LLP

Peter Skoufalos
355 Lexington Avenue
New York, New York 10017

ATTORNEYS FOR DEFENDANTS

ORDERED, by the Court:

Dated this 4/9, 2014



Ramon E. Reyes, Jr.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

<p>GLOBAL AUTO, INC., G AUTO SALES, INC., and EFFECT AUTO SALES, INC.,</p> <p><i>Plaintiffs,</i></p> <p>— vs. —</p> <p>MICHAEL HITRINOV, a/k/a MICHAEL KHITRINOV, EMPIRE UNITED LINES, CO. INC., CARCONT OY, LTD, and JOHN DOES 1 THROUGH 5,</p> <p><i>Defendants.</i></p>	<p>CIVIL ACTION NO.</p> <p>13-cv-02479 (SLT) (RER)</p>
--	--

UNDERTAKING

I, _____, state that:

1. My address is _____.
2. My present employer is _____, and the address of
my present employer is _____.
3. My present occupation or job title is _____.
4. I have received a copy of the Stipulated Protective Order (the "Stipulated Protective
Order") entered in this case.
5. I have carefully read and understand the provisions of the Stipulated Protective Order.

6. I will comply with all of the provisions of the Stipulated Protective Order.
7. I submit myself to the jurisdiction of the United States District Court for District of Minnesota for purposes of enforcement of the Stipulated Protective Order, and fully understand that violation of the Stipulated Protective Order is punishable by contempt of Court.
8. I further acknowledge that a violation of this Stipulated Order could subject the parties to irreparable injury for which money damages would be an inadequate remedy and, therefore, agree that, in addition to any other available remedies, injunctive relief shall be available to restrain any violations of the Stipulated Order.
9. I will hold in confidence, and will not disclose to anyone not qualified under the Stipulated Protective Order, any information designated as "Confidential" or "Attorney's Eyes Only" ("Confidential Discovery Material") or any words, substances, summaries, abstracts or indices of Confidential Discovery Material disclosed to me, and I shall use Confidential Discovery Material only for purposes of this Action and not for any other purpose, including, without limitation, any business, proprietary, commercial, governmental, or litigation purpose.
10. I will return all Confidential Discovery Material or any words, substances, summaries, abstracts and indices thereof, and copies thereof, which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party by whom I am employed or retained.
11. I declare under penalty of perjury that the foregoing is true and correct.

Executed this ____ day of _____, _____

Signature

EXHIBIT 2

Jon Werner

From: Boris Parker <Boris@parkerwenner.com>
Sent: Thursday, June 19, 2014 1:24 PM
To: Jon Werner
Subject: RE: Global v. Empire

Jon,

Did you get the disc this morning with the entire revised production that includes the email attachments? It came to 10151 pages total.

The password is Ye2h3Fru.

I did not receive a package from you yet.

Boris Parker
Attorney at Law
Parker & Wenner, P.A.
100 South 5th Street
2100 Fifth Street Towers
Minneapolis, MN 55402

Direct Line: 612-355-2201
Fax Line: 612-355-2210
Main Line: 612-355-2200
boris@parkerwenner.com

Confidentiality Notice

THIS INFORMATION IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THE COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY AT BORIS@PARKERWENNER.COM OR BY TELEPHONE AT 612.355.2200. THANK YOU.

From: Jon Werner [<mailto:jwerner@lyons-flood.com>]
Sent: Wednesday, June 18, 2014 10:17 PM
To: Boris Parker; harlangesq@comcast.net; Marcus Nussbaum; Peter Skoufalos
Subject: Global v. Empire

Boris,

Please find enclosed a copy of defendants' responses to plaintiffs' First Set of Interrogatories and First Set of Requests for Production. A hard copy with a DVD containing the documents referenced therein is being sent by Fedex,

Regards,

Jon Werner
One Exchange Plaza
55 Broadway, Suite 1501
New York, NY 10006

Tel: (212) 594-2400
Fax: (212) 594-4589
Mob: (917) 509-2797
jwerner@lyons-flood.com

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The logo is a circular emblem featuring a stylized, symmetrical design that resembles a bird's head or a pair of wings. It is composed of several concentric, curved lines that create a sense of depth and movement.

NightowlDiscovery

724 North 1st Street
Minneapolis, MN 55401
www.nightowlids.com
800.267.9695

Parker & Wrenner, P.A.
Global Auto Inc Vol001
PLS00001 - PLS10151
PDFs



NightOwlDiscovery



www.nightowlids.com

Burn Date
06/18/2014

EXHIBIT 3

From: Denis Shavrikov / CarCont Ltd.
Sent: Monday, May 13, 2013 8:49 AM
To: Michael Hitrinov
Cc: Darja Osipova / CarCont Ltd.
Subject: Kairat Nurgazinov / 2009 TOYOTA CAMRY 4T1BE46K19U306703
Attachments: Инвойс в приложении; тут письмо по которому перенаправили к вам и bill of sale; получение автомобиля с CBX; получение автомобиля со склада временного хранения

Categories: Orange Category

Kairat Nurgazinov / 2009 TOYOTA CAMRY 4T1BE46K19U306703

Invoices:

1. Invoice: inv 67936 dtd. 29.11.2012 G-Auto Sales, Inc. Car: 2010 TOYOTA CAMRY 4T1BE46K19U306703. Amount: \$ 12 900,00 (Deposit: \$ 10 500,00 + Rest: \$ 2 420,00)

Paid:

1. Doc not provided.

Rest to pay: \$ 2 420,00

From: kairat nurgazinov [kairat_nura@mail.ru]
Sent: Saturday, March 16, 2013 2:37 AM
To: Denis Shavrikov / CarCont Ltd.
Subject: Инвойс в приложении
Attachments: 67936 Toyota 15212 Nurgazinov.xls

----- Пересылаемое сообщение -----
От кого: GlobalAutoUSA <kotkacars@gmail.com>
Кому: kairat nurgazinov <kairat_nura@mail.ru>
Дата: Четверг, 20 декабря 2012, 12:22 +02:00
Тема: Re: Re[36]: договор No.67936

Здравствуйте.
Договор исправлен.
Данные с указанием номера контейнера из США еще не получены.

20 декабря 2012 г., 11:51 пользователь kairat nurgazinov <kairat_nura@mail.ru> написал:

здравствуйте игорь., да машина в котке будет 12900 долларов, в инвойсе стоит на оплату 12 900, в нижней сторочке должно быть 12900-10500 (депозит)=2400, иначе после прихода машины в казахстан при растаможке могут быть разночтения. о приходе машины в котку вы сообщите письмом на почту? остальные вопросы после прихода машины

Пятница, 14 декабря 2012, 18:26 от GlobalAutoUSA <kotkacars@gmail.com>:

+12156512993 Сергей
только он уполномочен отвечать на данные вопросы и принимать решения.

14 декабря 2012 г., 18:24 пользователь kairat nurgazinov <kairat_nura@mail.ru> написал:
Игорь, подскажите процесс возврата денег и сроки возврата, сумму возврата в моем случае

Пятница, 14 декабря 2012, 14:13 от GlobalAutoUSA <kotkacars@gmail.com>:

Сергей не подтвердил скидку!

14 декабря 2012 г., 11:50 пользователь kairat nurgazinov <kairat_nura@mail.ru> написал:

При разговоре он сказал, что если акция есть, то на меня она распространяется, детали уточнить с вами. поэтому я уточняю

Пятница, 14 декабря 2012, 11:41 от GlobalAutoUSA <kotkacars@gmail.com>:

В данном случае вопрос по акции Вам следует задать Сергею!
Авто должен быть в Котке через 10-15 дней.

14 декабря 2012 г., 11:38 пользователь kairat nurgazinov <kairat_nura@mail.ru> написал:

Игорь вы можете уточнить дату прихода машины в Котку, в какой срок произвести оплату суммы доставки до Казахстана г. Семей, сумму оплаты и подтвердить объявленные акции (по платежам и подаркам)

Пятница, 14 декабря 2012, 11:31 от GlobalAutoUSA <kotkacars@gmail.com>:

ок

14 декабря 2012 г., 11:22 пользователь kairat nurgazinov <kairat_nura@mail.ru> написал:

Игорь, с Сергеем договоренность на сумму 12 500, пожалуйста переправте дополнение, и доплату, по согласованию с Сергеем, произведу после прихода машины в Котку.

Пятница, 14 декабря 2012, 9:17 от GlobalAutoUSA <kotkacars@gmail.com>:

Здравствуйте.
Автомобиль забронирован за Вами.
Договор на доплату в приложении.
С уважением,
Игорь.

13 декабря 2012 г., 19:12 пользователь kairat nurgazinov

<kairat_nura@mail.ru> написал:

Здравствуйте Игорь, мне перевели деньги с лота №14775 на лот №15212, после прихода данной машины в Котку в какой приблизительно срок будет произведена поставка, желательно в г. Семей (Семипалатинск)?

Среда, 12 декабря 2012, 13:50 от GlobalAutoUSA <kotkacars@gmail.com>:

обращайте внимание на сайте под фото на эту надпись

Pre-Sales Price: \$10,900 Price does not include shipping, dealer and registration fee

что означает что цена без учета доставки из США и без заработка компании!

12 декабря 2012 г., 13:39 пользователь kairat nurgazinov

<kairat_nura@mail.ru> написал:

по списку цена за форестер 11 900

Среда, 12 декабря 2012, 13:35 от GlobalAutoUSA

<kotkacars@gmail.com>:

13900\$

12 декабря 2012 г., 13:29 пользователь kairat nurgazinov

<kairat_nura@mail.ru> написал:

Игорь из списка Форестер лот №15237, интересуется скидкой до оплаченной суммы, если да то я ее беру

Среда, 12 декабря 2012, 13:21 от GlobalAutoUSA

<kotkacars@gmail.com>:

пробег 30т.м.

цена в Кокте 12900\$

12 декабря 2012 г., 13:19 пользователь kairat nurgazinov

<kairat_nura@mail.ru> написал:

пробег, цена

Среда, 12 декабря 2012, 12:46 от GlobalAutoUSA

[<kotkacars@gmail.com>](mailto:kotkacars@gmail.com):

Toyota Camry SE 2008г.в. 2,4L

предварительные фото в приложении.

12 декабря 2012 г., 11:36 пользователь kairat nurgazinov

[<kairat_nura@mail.ru>](mailto:kairat_nura@mail.ru) написал:

данные по тойоте SE пожалуйста вышлите(цена, год выпуска, объем двигателя), когда поступит в Котку

Среда, 12 декабря 2012, 10:36 от GlobalAutoUSA

[<kotkacars@gmail.com>](mailto:kotkacars@gmail.com):

смотрите в списке!

12 декабря 2012 г., 10:36 пользователь kairat nurgazinov

[<kairat_nura@mail.ru>](mailto:kairat_nura@mail.ru) написал:

Теперь какой выход с моего положения, тойота продана, деньги перепчислены, что можете предложить в данном ценовом диапазоне из японских машин типа кроссоверов или седанов

Среда, 12 декабря 2012, 10:30 от GlobalAutoUSA

[<kotkacars@gmail.com>](mailto:kotkacars@gmail.com):

цена на авто лот №15280 указана без доставки и интереса компании! цена в Котке 16900\$

12 декабря 2012 г., 10:28 пользователь GlobalAutoUSA

[<kotkacars@gmail.com>](mailto:kotkacars@gmail.com) написал:

да, конечно т.к. компания оптовая их и продают за ранее!

12 декабря 2012 г., 10:26 пользователь kairat nurgazinov
<kairat_nura@mail.ru> написал:

Еще вопрос если на сайте вашей компании заинтересовала
какая-то машина, то указанное на сайте месторасположение
может быть отличнм от фактического?

Среда, 12 декабря 2012, 9:17 от GlobalAutoUSA
<kotkacars@gmail.com>:

Воспримем этот Ваш вопрос как шутку!)
Цены на эти авто составят по 16900\$

12 декабря 2012 г., 6:24 пользователь kairat nurgazinov
<kairat_nura@mail.ru> написал:

игорь, лот №15280 и лот №14425 оба субару аутбак,
данные по ним: состояние машины, кол-во ключей,
возможность продать за уже перечисленные деньги?

Вторник, 11 декабря 2012, 22:20 от GlobalAutoUSA
<kotkacars@gmail.com>:

Данные авто еще в США.
Список автомобилей и мотоциклов которые в Котке и
на подходе в приложении.

11 декабря 2012 г., 19:16 пользователь kairat
nurgazinov <kairat_nura@mail.ru> написал:

Игорь, рассмотрите варианты: Honda CRV 2010
(10/09) лот №15319 стоимость 11 900, Honda CRV
2009 (12/08) лот №15269 стоимость 10900,
возможность скидки, или в пределах перечисленной
суммы без доплаты, более интересен первый вариант.
Обе машины в Котке (по данным сайта), пробег
машин, кол-во ключей, наличие карфакса, если

возможно то время поставки до нового года.

Понедельник, 10 декабря 2012, 22:40 от
GlobalAutoUSA <kotkacars@gmail.com>:
Этот авто продан и к тому же он в США.

10 декабря 2012 г., 21:45 пользователь kairat
nurgazinov <kairat_nura@mail.ru> написал:

Игорь бухгалтерия подтвердила платеж, платеж
дошел еще в пятницу, именно по инвойсу
выставленному вами за лот 14775, уточните
пожалуйста, я запрос еще в бухгалтерию пошлю, т.к.
они это запросили

Пятница, 30 ноября 2012, 18:25 от GlobalAutoUSA
<kotkacars@gmail.com>:
да, конечно акция действует!

30 ноября 2012 г., 18:14 пользователь kairat
nurgazinov <kairat_nura@mail.ru> написал:
извините уточните пожалуйста какой телефон?

Fri 30 Nov 2012 17:28:37 от GlobalAutoUSA
<kotkacars@gmail.com>:
Да, если это попутно, то возможно разгрузить по
дороге.
А телефон Вам отправят по почте DHL

30 ноября 2012 г., 17:09 пользователь kairat
nurgazinov <kairat_nura@mail.ru> написал:
Игорь, еще небольшие уточнения: прочитал на
вашем сайте о новогодней акции она в моем. я
надеюсь, случае действует. и если авто доставляется
автовозом то возможно ли доставка до
семипалатинска, т.к. трасса в алматы возможно

будет лежать через нас?, т.е. это ближе к России на 1200 км.

Fri 30 Nov 2012 13:57:06 от GlobalAutoUSA
<kotkacars@gmail.com>:

Автомобиль будет отправлен на СВХ "Жакслык" в г.Алматы и там же вы получите автомобиль и документы у брокера. Документы должны сопровождать автомобиль и придут с ним же.

30 ноября 2012 г., 13:54 пользователь kairat nurgazinov <kairat_nura@mail.ru> написал:
спасибо за информацию, перечисление произведу 3-4 декабря, т.к. у нас праздники и банки не работают. и еще у кого я смогу получить машину в алматы? и помощь по растаможке, контакты? документы идут с машиной или DHL?

Fri 30 Nov 2012 12:12:11 от GlobalAutoUSA
<kotkacars@gmail.com>:

Здравствуйте.

1. в договоре сказано что предоплата не явл. полной оплатой! (но если платить 100% то это окончательный расчет)
2. открепление это внутренний документ (право на отдачу авто - делает бухгалтерия)
3. портовые сборы это за разгрузку и оформление входящих и исходящих документов на таможенном СВХ которые не входят в стоимость (около 300евро)
4. пробег 57т.м. 2 ключа
5. После оплаты потребуется все точные данные на кого оформлять в частности РНН.
6. представителей в РК у нас нет уже 2года (офис закрыли после поднятия таможенных пошлин)

С уважением,

Игорь.

Мой номер (812)3364205, +358440233212;

kotkacars@gmail.com

Игорь я до вас не могу дозвониться, т.
87273185128 вы не поднимаете. договор
инвойс получил, но у меня вопросы по нему:

1. не понятен п.1, почему полная оплата в моем случае не является окончательной покупкой ав-ля?
2. что такое открепительное удостоверение, и когда его заказывать после прибытия ав-ля в пункт назначения или до прибытия?
3. что такое портовые и складские расходы, разве они не входят в сумму оплаты?
4. какой пробег у машины и сколько ключей идет с ней?
5. до какого я должен оплатить инвойс, как будет проходить процедура оформления документов на меня, если вами не запрошены мои РНН, номер удостоверения и т.д. или это после оплаты?

6. кто представитель в РК г. алматы и как с ним связаться?

29 ноября 2012 г., 10:38 пользователь
GlobalAutoUSA <kotkacars@gmail.com>

написал:

Здравствуйтесь.

Договор-инвойс на оплату в приложении.

После оплаты не забудьте уведомить об этом бухгалтерию. (account@globalautousa.com)

С уважением,

Игорь.

Мой номер (812)3364205, +358440233212;

kotkacars@gmail.com

Appendix C

**Two E-mails from Lakis Law
(July 25, 2016 and August 4, 2016)**

From: Lakis Law <wlakis@lakis-law.com>
Sent: Monday, July 25, 2016 2:04 PM
To: jwerner@lyons-flood.com
Cc: bec@cargolaw.com; 'Mark Estrella'
Subject: FW: Nussbaum fan club

Jon,

Thanks for your email below.

On June 8, 2016, the Court verbally ordered us to get all discovery completed by August 31. On June 13, I wrote to Nussbaum advising that my client is available for deposition the week of July 25 and asking for his availability during this week. On June 17 Nussbaum wrote back stating that his client and he are available on July 28 (with July 29 as a backup) for the deposition, which is to take place in Brooklyn. Does any of this help?

Bill

WILLIAM E. LAKIS • LAKIS LAW OFFICES, PC
145 N. FRANKLIN TPKE, STE 122 • RAMSEY, NJ 07446
TEL: 201-962-9300 • FAX: 201-962-9301 • CELL: 914-213-0639 ATTORNEY-CLIENT PRIVILEGE AND
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you have received this communication in error, please notify Lakis Law Offices immediately by e-mail
reply and delete this message and any attachments from your computer systems. No privilege is waived
by the transmission of this message and any attachments. Thank you.

From: Lakis Law <wlakis@lakis-law.com>
Sent: Thursday, August 04, 2016 5:47 PM
To: jwerner@lyons-flood.com
Cc: bec@cargolaw.com; 'Mark Estrella'
Subject: Case 2:15-cv-00487-SRC-CLW CONCORD AMERICAN AUTOSALES, INC.
v. USA INTERCARGO LLC. et al Letter

August 4, 2016

Dear Jon:

In response to your inquiry, I can confirm that in mid-June 2016, attorney Marcus Nussbaum and I agreed that my client's deposition in the subject case would take place on July 28, 2016 and possibly continue on July 29, 2016 in Brooklyn, New York. I can also confirm that the deposition went forward on July 28, 2016 in Brooklyn and that Mr. Nussbaum was personally in attendance during the deposition.

Regards,

Bill Lakis

WILLIAM E. LAKIS • LAKIS LAW OFFICES, PC
145 N. FRANKLIN TPKE, STE 122 • RAMSEY, NJ 07446
TEL: 201-962-9300 • FAX: 201-962-9301 • CELL: 914-213-0639

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Appendix D

**E-mail from Glenn Reiser
(August 4, 2016)**

From: Glenn Reiser <greiser@new-jerseylawyers.com>
Sent: Thursday, August 04, 2016 6:50 PM
To: 'Jon Werner'
Cc: 'Joseph Sferrazza'
Subject: FW: Out of Office Auto-reply RE: UAB PAMARIO DVARAS et al v. DKP WOOD RAILINGS & STAIRS INC. et al

Jon, below you will see the “auto reply” response I received from Nussbaum after I emailed him on July 12th. It says his office would reopen on July 25th. That’s a big difference – returning on July 25th versus returning on August 12th. Is it possible that this guy sets up different auto responses depending upon who emails him? Is that even possible?

Glenn R. Reiser
LoFaro & Reiser, LLP
20 Court Street
Hackensack, New Jersey 07601
Tel: (201) 498-0400
Fax: (201) 498-0016
Web: <http://www.njlawconnect.com>, <http://www.new-jerseylawyers.com>,
<http://www.newjerseycollectionattorneys.com>
Linkedin: <https://www.linkedin.com/in/newjerseyattorney>

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From: Marcus Nussbaum [<mailto:marcus.nussbaum@gmail.com>]
Sent: Tuesday, July 12, 2016 8:30 PM
To: greiser@new-jerseylawyers.com
Subject: Out of Office Auto-reply RE: UAB PAMARIO DVARAS et al v. DKP WOOD RAILINGS & STAIRS INC. et al

Please be advised that the Law Office of Marcus A. Nussbaum, Esq. is now closed and will reopen on July 25, 2016 at 9:00 a.m., and that no email communications will be received, opened, reviewed, or responded to until such time.

Regards,

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
<http://www.nussbaumlawfirm.com/>

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Regards,

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
<http://www.nussbaumlawfirm.com/>

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